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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 766

HUDSON & MANHATTAN RAILROAD COMPANY,
Appellant,

vs.

CITY OF JERSEY CITY and FRED M. VINSON, Economic Stabilization Director, by CHESTER BOWLES, Price Administrator,
Appellees.

Answer of Appellee, City of Jersey City, to the Motion of the Appellant for Leave to File a Petition for Rehearing of This Court's Order of April 3, 1944, Dismissing the Appeal Herein.

CHARLES A. ROONEY,
Attorney for Appellee,
City of Jersey City.

CHARLES HERSHENSTEIN,
Of Counsel.

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To the Honorable the Supreme Court of the United States:

Appellant, Hudson and Manhattan Railroad Company, moves this Court for an order granting said appellant leave to file within fifteen (15) days after the entry of such order, a petition for the rehearing of the Order of this Court of April 3, 1944, granting the motion dismissing the above appeal.

Answering said motion, this appellee respectfully states:

1. The above appeal was taken to this Court by the Hudson & Manhattan Railroad Company from the granting of

the interlocutory injunction issued by the court below. Thereafter, the appellant proceeded with the final hearing in the court below and after a final injunction was awarded took an appeal to this Court from said final injunction (No. 767, October Term, 1943).

2. Upon motion, this Court on April 3, 1944, dismissed the appeal from the interlocutory injunction and entered the following *per curiam* opinion:

> "*Per curiam*: The motion to dismiss is granted and the appeal is dismissed. Smith v. Illinois Bell Telephone Co., 270 U. S. 587, 588-9; Sterling v. Constantin, 287 U. S. 378, 386."

3. This Court properly dismissed the appeal from the interlocutory injunction because the interlocutory injunction merged in the final decree which permanently enjoined the orders of the Interstate Commerce Commission and said final injunction superseded the operative effect of the interlocutory injunction. A determination of the appeal from the said interlocutory injunction, as well as the propriety of its issuance have become moot.

4. The dismissal by this Court of the appeal from the interlocutory injunction was not provisional nor conditioned upon the outcome of the appeal from the final injunction. For all intents and purposes the interlocutory injunction no longer existed at the time the appeal was taken from the final injunction issued by the lower court. Thus in effect, by this motion, appellant railroad is now asking this Court to revive a temporary injunction which no longer exists, for the purpose of reversing it.

5. Appellant railroad company, in its motion papers which lead to the dismissal of the above appeal on April

3, 1944, indicated its real motive in seeking to continue with the appeal, when it stated that it contemplated to maintain an action for damages against appellee, City of Jersey City, by reason of appellee's "reckless, if not malicious," prosecution of the application for the interlocutory injunction. We urged then, and again earnestly respectfully submit now, that the railroad company is not justified in asking this Court to lend its dignity toward aiding a prosecution, in some collateral proceeding of a claim for damages by one of the parties to the appeal against the other.

We therefore respectfully submit that the motion of the appellant should be denied.

CHARLES A. ROONEY,
Attorney for Appellee,
City of Jersey City.

CHARLES HERSHENSTEIN,
Of Counsel.